ORIGINAL

In the Supreme Court of Ohio

In the Matter of The Adoption of M.B.	)	Case No. 11-0831
	)	On Appeal from Summit County Court of Appeals No. 25304

Notice of Certified Conflict

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Notice of Certified Conflict

Now comes Appellant, T.R., the Stepfather of M.B., and gives notice pursuant to S.Ct. Prac. R. 4.1 that, on April 18, 2011, the Ninth District Court of Appeals certified a conflict on the following two issues:

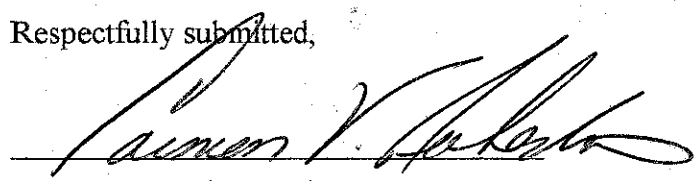
> 1. When a biological parent fails to provide any court ordered child support for one year, do small monetary gifts paid directly to the child constitute the provision of "maintenance and support of the minor as required by law or judicial decree" for purposes of R.C. 3107.07(A)?
>
> 2. When reviewing a probate court's decision regarding whether or not a biological parent's financial contribution constitutes "maintenance and support of the minor as required by law or judicial decree" for purposes of R.C. 3107.07(A), is the standard of review de novo or whether the decision is contrary to the manifest weight of the evidence?

On March 16, 2011, the Ninth District Court of Appeals issued a decision that held that small monetary gifts in themselves constitute "maintenance and support as required by law or judicial decree" without the payment of any court-ordered child support. It has now found that its decision is in conflict with *In the Matter of the Adoption of McCarthy* (Jan. 17, 1992), 6th Dist. No. L-91-199, in which the Sixth District Court of Appeals held that gifts do not constitute "maintenance and support" in the absence of the payment of child support.

The March 16, 2011, judgment reversed a prior holding by the Summit County Probate Court that held that the gifts given in this case did not constitute "maintenance and support." In reviewing the lower court's decision, the Ninth District utilized a de novo standard of review. It has now found that its use of this standard of review is in conflict with the case of *In the Matter of the Adoption of Kat P.*, (5th Dist.), Fairfield App. Nos. 09CA10, 09CA11, 2009-Ohio-3852, which

held that the proper standard of review is whether the probate court's decision is against the manifest weight of the evidence.

Respectfully submitted,



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Proof of Service

The undersigned certifies that a true and accurate copy of the foregoing was sent by regular U.S. Mail this 16th day of May, 2011 to:

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Counsel for Appellant, T.R.

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. 25304

IN THE MATTER OF:
THE ADOPTION OF M.B.

JOURNAL ENTRY

Appellee has moved, pursuant to App.R. 25, to certify a conflict between the judgment in this case, which was journalized on March 16, 2011, and the judgments of several other district courts of appeal. Appellant has responded to the motion. Appellee proposes two issues for certification.

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment *** is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]" "[T]he alleged conflict must be on a rule of law -- not facts." *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 596.

Appellee has proposed that a conflict exists between this Court and the Tenth District Court of Appeals in *In re Adoption of Strawser* (1987), 36 Ohio App.3d 232; the Sixth District Court of Appeals in *In the Matter of the Adoption of McCarthy* (Jan. 17, 1992), 6th Dist. No. L-91-199; and the Eleventh District Court of Appeals in *In re Adoption of Wagner* (1997), 117 Ohio App.3d 448 on the following narrowly crafted issue:

> First issue: "When a biological parent fails to provide any court ordered child support for one year, but gives the child two small gifts in the form of cash and a gift card, do such gifts constitute the provision of 'maintenance and support of the minor as required by law or judicial decree' for purposes of R.C. 3107.07(A)?"

Were we to construe appellee's issue as narrowly as presented, we would conclude that no conflict exists between our opinion and any of the three cited opinions. Even construing the issue more broadly, however, we conclude that no conflict exists between the instant opinion and the opinions of the Tenth and Eleventh districts. The *Strawser* court addressed the issue of whether non-monetary gifts (toys and clothing) and the payment for a benefit about which neither the child nor residential parent knew constituted "maintenance and support" for purposes of R.C. 3107.07(A). The *Wagner* court addressed the issue of whether the payment of a meager portion of court-ordered child support constituted "maintenance and support" for purposes of R.C. 3107.07(A).

Construing the issue more broadly, we reasonably conclude that a conflict exists between the instant opinion and the opinion of the Sixth District Court of Appeals. The *McCarthy* court addressed the issue of whether, in the absence of the payment of any court-ordered child support, two small monetary gifts paid directly to the child constituted "maintenance and support" for purposes of R.C. 3107.07(A). The Sixth District concluded that such payments do not constitute maintenance or support because they will not reach the custodian to be used for the child's needs. In the instant case, this Court concluded that the payment of two small monetary gifts paid directly to the child, in the absence of the payment of any court-ordered child support, constituted "maintenance and support" because they might reasonably be used for the child's needs and demonstrated the intent not to abandon the child. Accordingly, we conclude that a conflict of law exists, and we certify a conflict on the following question:

> "When a biological parent fails to provide any court-ordered child support for one year, do small monetary gifts paid directly to the child constitute the provision of 'maintenance and support of the minor as required by law or judicial decree' for purposes of R.C. 3107.07(A)?"

Appellee has proposed that a conflict exists between this Court and the Fifth District Court of Appeals in *In the matter of the Adoption of Kat. P.*, 5th Dist. Nos. 09CA10, 09CA11, 2009-Ohio-3852, on the following issue:

> Second issue: "When reviewing a probate court's decision that a given level of material contribution does not constitute 'maintenance and support of the minor as required by law or judicial decree' for purposes of R.C. 3107.07(A), is the standard of review de novo or whether the decision is contrary to the manifest weight of the evidence?"

Citing *In re Adoption of Masa* (1986), 23 Ohio St.3d 163, the Fifth District broadly stated that "[a]n appellate court will not disturb a trial court's decision on adoption unless it is against the manifest weight of the evidence." *In re Kat P.*, at ¶12. The *Masa* court, however, enunciated the manifest weight of the evidence standard of review within a much narrower context, specifically, on the "question of whether justifiable cause [for the failure to support] has been proven by clear and convincing evidence[.]" Id. at 165. In the instant case, this Court declined to expand the application of the standard of review relevant to the issue of "justifiable cause" enunciated by the Ohio Supreme Court in *Masa* and *In re Adoption of Bovett* (1987), 33 Ohio St.3d 102, 106, to the issue of whether the parent failed to provide "maintenance and support" of the child. Because R.C. 3107.07(A), as in effect at the time relevant to this matter, did not define the terms "maintenance and support," necessarily requiring our interpretation of those terms, we applied a de novo standard of review. Accordingly, we conclude that a conflict of law exists, and we certify a conflict on the following question:

> "When reviewing a probate court's decision regarding whether or not a biological parent's financial contribution constitutes "maintenance and support of the minor as required by law or judicial decree" for purposes of R.C. 3107.07(A), is the standard of review de novo or whether the decision is against the manifest weight of the evidence?"

Upon consideration, appellee's motion to certify a conflict is granted.

Judge

Concur:
WHITMORE, J.
MOORE, J.

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN THE MATTER OF:
THE ADOPTION OF M.B.

C.A. No. 25304

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2008 AD 193

DECISION AND JOURNAL ENTRY

Dated: March 16, 2011

CARR, Presiding Judge.

{¶1} Appellant, S.B. ("Father"), appeals the judgment of the Summit County Court of Common Pleas, Probate Division, which determined that his consent to the adoption of his child, M.B., by appellee, T.R. ("Stepfather"), was not necessary. This Court reverses.

I.

{¶2} M.B. was born on April 27, 1996. Her mother, A.R. ("Mother"), and Father divorced in 2000. Mother married Stepfather on April 28, 2001, at which time M.B. began living in Stepfather's home. On September 12, 2008, Stepfather filed a petition for adoption of M.B. He alleged that Father's consent to the adoption was not necessary pursuant to R.C. 3107.07 because Father had failed without justifiable cause to provide for the maintenance and support of M.B. for one year immediately preceding the filing of the petition. Throughout the case below, the parties referred to the relevant time period from September 12, 2007, to September 12, 2008, as the "adoption period" and we will do the same.

{¶3} On October 10, 2008, Father filed an objection to the adoption petition, disputing that his consent was not required. The parties engaged in discovery. On April 17, 2009, the matter proceeded to hearing before the magistrate. On July 20, 2009, the magistrate issued a decision in which she found that the $125 gift card and $60 cash that Father sent to the child, respectively for Christmas and her birthday during the adoption period, did not constitute support. Moreover, the magistrate found that Father did not have justifiable cause for failing to pay support. The magistrate ordered, therefore, that Father's consent to the adoption was not necessary. Father filed timely objections to the magistrate's decision.

{¶4} In his objections, Father argued that the two "financial items," i.e., the gift card and cash, he sent to M.B. at Christmas and her birthday constituted support for purposes of negating the applicability of R.C. 3107.07. In addition, he argued that, should the trial court determine that he failed to provide any support to M.B., then his failure was justified by his circumstances. Stepfather filed a response in opposition to Father's objections. On February 19, 2010, the probate court found that Father had communicated with M.B. during the adoption period and that he had paid child support until seven months prior to the commencement of the adoption period, although he failed to make any child support payments to either Mother or the relevant child support agency during the adoption period. In addition, the probate court found that the Christmas gift card and birthday cash which Father sent directly to the child were "not for necessities" and, therefore, did not constitute support. The probate court then found that Father's failure to pay support for the child during the adoption period was without justifiable cause. Consequently, the probate court overruled Father's objections, adopted the Magistrate's decision, and ordered that Father's consent to the adoption was not necessary pursuant to R.C. 3107.07.

{¶5} Father filed a timely appeal, raising one assignment of error for review.

ASSIGNMENT OF ERROR

"PAYMENTS OF CASH AND GIFT CARD TOTALING $185.00 ARE SUPPORT UNDER [R.C.] 3107.07 AND THE COURT ERRED IN FINDING FATHER'S CONSENT UNNECESSARY."

{¶6} Father argues that the probate court erred in concluding that his consent to the adoption of M.B. was not required pursuant to R.C. 3107.07 because he had failed to pay support for the child during the one year period immediately preceding the filing of the adoption petition. This Court agrees.

{¶7} The issues of Father's communication with the child and any justifiable cause for failure to provide support and maintenance are not at issue in this appeal. Rather, Father merely challenges the probate court's finding that his gifts to the child in the amount of $185.00 did not constitute support.

{¶8} Stepfather urges this Court to review the matter to determine whether the probate court's finding that parental consent is unnecessary was against the manifest weight of the evidence. The case he cites in support, however, holds merely that the probate court's determination regarding justifiable cause will not be disturbed unless it was against the manifest weight of the evidence. See *In re Adoption of Bovett* (1987), 33 Ohio St.3d 102, 106. Whether Father had justifiable cause for any failure to pay support, however, is not before this Court on appeal. Rather, Father challenges the probate court's determination that the money he provided to the child was not in the nature of support. Our review of that issue necessarily requires us to determine the meaning of "maintenance and support" as contemplated by the statute. "An appellate court's review of the interpretation and application of a statute is de novo [and we may]

not give deference to a trial court's determination [in that regard.]" *In re Barberton-Norton Mosquito Abatement Dist.*, 9th Dist. No. 25126, 2010-Ohio-6494, at ¶11.

{¶9} R.C. 3107.06 enunciates the general requirement that a father must execute a written consent before another person may adopt his child. R.C. 3107.07 sets forth exceptions to the consent requirement.

{¶10} The version of R.C. 3107.07 in effect at the time relevant to this matter states, in pertinent part:

> "Consent to adoption is not required of any of the following:
>
> "(A) A parent of a minor, when it is alleged in the adoption petition and the court finds after proper service of notice and hearing, that the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner."

The petitioner has the burden of proving, by clear and convincing evidence, that the natural parent failed to provide for the maintenance and support of the child. *Gorski v. Myer*, 5th Dist. No. 2005CA00033, 2005-Ohio-2604, at ¶13.

{¶11} This Court has adopted the well established view that "the consent provisions of R.C. 3107.07(A) are to be strictly construed to protect the interests of the nonconsenting parent." *In the Matter of the Adoption of Jarvis* (Dec. 11, 1996), 9th Dist. No. 17761, citing *In re Adoption of Sunderhaus* (1992), 63 Ohio St.3d 127; *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361. Moreover, we recognized the termination of a parent's rights by way of adoption as "an extreme measure," requiring that the parent's failure to provide maintenance and support must rise to the level of abandonment and loss of interest in the child. Id., citing *In re Adoption of Mackall* (Apr. 24, 1985), 9th Dist. No. 1365.

{¶12} The applicable version of the statute does not define the terms "maintenance and support." Moreover, although Sub. S.B. 189 out of the 128th General Assembly proposes amendments to the current version of the statute which would clarify the meaning of "maintenance and support," those amendments have not yet been adopted and, in any event, would not apply retroactively to this case. See, e.g., *In re Adoption of W.C.*, 189 Ohio App.3d 386, 2010-Ohio-3688, at ¶33-42 (recognizing a parent's constitutional fundamental liberty interest in raising his child; the unconstitutional retroactive application of laws to protected, vested rights; the legislature's lack of an express intent that R.C. 3107.07 be applied retroactively; and the burdensome, rather than merely remedial, nature of the amendment); see, also, *VanBremen v. Geer*, 187 Ohio App.3d 221, 2010-Ohio-1641.

{¶13} Where the legislature has failed to define terms, this Court recognizes the basic rule of construction by which we accord words their ordinary meaning. *Absolute Machine Tools, Inc. v. Liberty Precision Industries, Ltd.*, 9th Dist. No. 08CA009503, 2009-Ohio-4612, at ¶15, citing *In re Adoption of Huitzil* (1985), 29 Ohio App.3d 222, 223. Other districts have done the same when considering the meaning of the "maintenance and support" discussed in R.C. 3107.07. See, e.g., *Garner v. Greenwalt*, 5th Dist. No. 2007 CA 00296, 2008-Ohio-5963, at ¶26. Black's Law Dictionary (8 Ed.2004) 973 defines "maintenance" as "[f]inancial support given by one person to another[.]" "Support" is defined as "[s]ustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree and comfort to which one is accustomed." Id. at 1480. In addition,

> "As long as the parent makes some provision for the support of the child during the one year preceding the adoption petition, the statutory condition for dispensing with the parent's consent to an adoption is not satisfied even if the amounts are relatively small compared to the support obligation. A court should consider a parent's nonmonetary contributions of clothing, shoes, and diapers to a child. 'Maintenance and support,' within the meaning of the statute providing

> that a natural parent's consent to adoption is not required if the natural parent failed without justifiable cause to provide maintenance and support for the child for one year, does not simply refer to child-support payments or other monetary contributions; it may mean any type of aid to feed, clothe, shelter, or educate the child, to provide for health, recreation, or travel expenses, or to provide for any other need of the child. When a natural parent is accused of not having provided support and maintenance for one year without justifiable cause, the relevant inquiry is not whether the parent provided support, but whether the parent's failure to support is of such magnitude as to be the equivalent of abandonment." 47 Ohio Jur.3d Family Law, Section 895.

{¶14} In this case, the parties do not dispute that there was a child support order in effect and that Father had not made any child support payments through the applicable child support enforcement agency. Moreover, the parties agree that Father did not send any money for the benefit of the child directly to Mother during the adoption period. This Court has recognized that "when a husband and wife are divorced, their obligation to support a minor child is governed by the domestic relations child support statute, R.C. 3109.05." *Jarvis*, supra, citing *Meyer v. Meyer* (1985), 17 Ohio St.3d 222, 224. However, we also recognized in *Jarvis* that there are procedural mechanisms by which a parent may compel the payment of child support by the other. In *Jarvis*, the divorce decree noted that the issue of child support was being "held in abeyance." Accordingly, the father was not under court order to support the child, so we recognized the parent's common law duty to support his child. We noted that the mother could have moved the domestic relations court for an order of support. In the instant case, where a support order existed, Mother could have filed a contempt motion based on Father's failure to pay child support. A finding of contempt and any concomitant orders designed to compel compliance with the support order are the consequences Father might have reasonably expected in this case. Under the circumstances of this case, however, Father should not have reasonably expected an involuntary termination of his parental rights.

{¶15} The parties agree that Father sent a $125 Aeropostale gift card at Christmas and $60 in cash in April 2008 directly to M.B. Father conceded that he sent both to the child as gifts.

{¶16} There is a split of authority on whether certain gifts or other monetary contributions may constitute support. For example, the Tenth District Court of Appeals affirmed the trial court's finding that the putative father had failed to provide support to his child when he merely purchased $133 worth of toys and clothing for the child as gifts at Christmas because the child already possessed a sufficient amount of toys and clothing. *In re Adoption of Strawser* (1987), 36 Ohio App.3d 232, 234-5. The *Strawser* court further concluded that the father's provision of medical insurance for the child, purchased for $6.00 per month and of which the mother knew nothing, did not constitute support because it had no real value to the child. Id. The Sixth District Court of Appeals has strictly construed the meaning of the word "support" to mean only those monies paid directly to the child's parent or the appropriate child support bureau and not money given directly to the child. *In the Matter of the Adoption of McCarthy* (Jan. 17, 1992), 6th Dist. No. L-91-199. The *McCarthy* court construed a $10 bill and four $1 bills sent directly to the child in two letters from the father as gifts which would not constitute support for purposes of R.C. 3107.07. Id. In addition, the Eleventh District Court of Appeals concluded that a father who paid child support in the amount of $329.40, an amount less than three percent of his income, had failed to provide maintenance and support for his child so that his consent to adoption was not required. *In re Adoption of Wagner* (1997), 117 Ohio App.3d 448, 454. The *Wagner* court also discounted the father's payments for medical insurance for the child because the mother was unaware that the benefit existed. Id. On the other hand, some courts have recognized the provision of maintenance and support where a parent has made only meager child support payments to the appropriate support bureau. See, e.g., *Celestino v.*

Schneider (1992) 84 Ohio App.3d 192, 197 (father's payment of $36 to support bureau constituted support for purposes of R.C. 3107.07); *Vecchi v. Thomas* (1990), 67 Ohio App.3d 688, 691 (father's payment of $130 to support bureau constituted support for purposes of R.C. 3107.07). Moreover, the Third District Court of Appeals has recognized a father's care for the child's physical needs during visitation as support for purposes of R.C. 3107.07, even in the absence of any payments to the child support enforcement agency. *In the Matter of the Adoption of Huffman* (Aug. 29, 1986), 3d Dist. No. 10-85-4. Neither the Ohio Supreme Court nor this Court, however, has addressed this particular issue.

{¶17} In this case, we conclude that the two monetary gifts to the child constituted maintenance and support. Despite the lack of child support payments, Father's monetary gifts to M.B. evidenced his intent not to abandon his child. The gift card was from a clothing store, which enabled the child to purchase clothing, an undeniable necessary. In addition, it is difficult to see how the $60 in cash for the child's birthday did not provide the means by which the child might attain additional comforts. Although not child support pursuant to a judicial decree, those monies served to provide additional financial support for the benefit of the child. Accordingly, there was clear and convincing evidence that Father provided for the maintenance and support of M.B. during the adoption period by virtue of his two monetary gifts to the child. Although Father's total financial contribution to the child's welfare was small, the timing of the contributions was thoughtful and clearly evidenced his intent not to abandon the child. Accordingly, the trial court erred in construing Father's contributions as a failure to provide maintenance and support for the child. Therefore, the probate court erred by concluding that Father's consent to the adoption of M.B. was not required. Father's assignment of error is sustained.

III.

{¶18} Father's sole assignment of error is sustained. The judgment of the Summit County Court of Common Pleas, Probate Division, is reversed and the cause remanded for further proceedings consistent with this opinion.

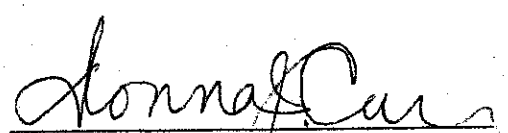
Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.



DONNA J. CARR
FOR THE COURT

WHITMORE, J.
CONCURS

MOORE, J.
DISSENTS, SAYING:

{¶19} The majority concludes that a $125 gift certificate at Christmastime and a $60 cash gift at M.B.'s birthday are sufficient to establish maintenance and support by Father when he made no support payments for one year. I must respectfully dissent. The majority correctly points out that the terms "maintenance and support" are not defined in this section of the Revised Code. As a result, we give those terms their ordinary meanings. The American Heritage Dictionary defines "maintenance" as "[t]he action of maintaining[;] * * * [t]he state of being maintained[;] * * * a means of maintaining or supporting." The American Heritage Dictionary (Second College Ed. 1995) 757. "Maintain" is defined as "[t]o provide for;" to "sustain." Id. "Support" is defined as "[t]o provide for or maintain, by supplying with money or necessities." Id. at 1222. These are common, ordinary meanings of the terms. A gift certificate at Christmas and a small cash gift at a child's birthday do not, in my mind, constitute support. Those are tokens of affection that are expected from friends or relatives who have no obligation for maintenance. Even Father recognized that they were just gifts. He was not "maintaining" or "supporting" M.B. in any real sense of those words.

{¶20} Father did not send any money for M.B. to Mother for the child's support. However, the majority notes that Mother did not seek a motion for contempt with the trial court or in any other way attempt to compel Father to meet his obligation. It argues that Father might have reasonably expected contempt orders as a result of his recalcitrance, but he could not expect an involuntary termination of his parental rights. Contempt proceedings were certainly available to Mother; however, the majority misses the point. Father was aware during the entire year that he had not made a single support payment. We recognize the legal maxim that each person is presumed to know the law. *State v. Pinkney* (1988), 36 Ohio St.3d 190, 198. R.C. 3107.07(A)

provides that consent for adoption is not required where a parent of a minor child has failed to provide for the maintenance and support of that child as required by legal decree for a period of at least one year. Because of Father's failure to meet his obligation, the responsibility for taking care of M.B. fell on Mother as custodial parent. I would be hesitant to place any further responsibility upon her (such as putting him on notice) than that which she already bears.

{¶21} Parenting involves sacrifice and responsibility. While one parent meets the day-to-day expenses of providing for food, clothing and shelter, I don't think it wise to allow the other to show up with gifts on holidays and consider that as the type of support and maintenance that triggers a notice of the intent to adopt. If the statutory provision of whether Father had justifiable cause for failure to pay support were an issue, the result might be different. However, on the legal issue of whether his two holiday gifts constitute maintenance and support, I agree with the trial court that they do not. Accordingly, I would affirm.

APPEARANCES:

SCOT A. STEVENSON, Attorney at Law, for Appellant.

DIANA COLAVECCHIO, Attorney at Law, for Appellee.

Time of Request: Wednesday, March 23, 2011 09:40:20 EST
Client ID/Project Name:
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Research Information

Service: Terms and Connectors Search
Print Request: Current Document: 8
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2310 2ND ST
CUYAHOGA FALLS, OH 44221-2530

In the matter of the adoption of: Ryan Michael McCarthy; Brian John McCarthy Denise Lorraine McCarthy Appellants v. Gary Groszewski Appellee

Court of Appeals No. L-91-199

COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, LUCAS COUNTY

1992 Ohio App. LEXIS 103

January 17, 1992, Decided

PRIOR HISTORY: [*1] Trial Court No. AD 90-0109

CASE SUMMARY:

PROCEDURAL POSTURE: Appellants mother and stepfather sought review of a judgment of the Probate Division of the Court of Common Pleas of Lucas County (Ohio), which had denied their petition for the stepfather's adoption of the mother's child. They contended that the probate court erred in finding that appellee father's consent was required to the adoption.

OVERVIEW: The mother and stepfather alleged in their petition that the father's consent to the adoption was not required. *Ohio Rev. Code Ann. § 3107.07(A)* provided that consent was not required if the father had failed without justifiable cause to provide support for the child during the year prior to the filing of the petition. The father had been incarcerated for much of the year and had made no payments through the child support enforcement agency. He had, however, made two payments totaling $ 14 directly to the child during the year. The probate court found that because of these payments the father's consent was required. The court held that under *Ohio Rev. Code Ann. § 2301.36(A)* the father's payments were considered gifts and not support for the child. The probate court erred in finding that the father had provided any support for the child during the year.

OUTCOME: The court reversed and remanded the judgment of the probate court to determine whether there was a justifiable cause for the father's failure to support the child.

LexisNexis(R) Headnotes

Family Law > Adoption > Consent > Biological Parents
Family Law > Adoption > Consent > Exceptions
[HN1] The Ohio statute which governs when the consent of a natural parent is required for the adoption of the parent's child is *Ohio Rev. Code Ann. § 3107.07. Section 3107.07(A)* provides that consent to adoption is not required when it is alleged in the adoption petition and the court finds after proper service of notice and hearing, that the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner.

Evidence > Procedural Considerations > Burdens of Proof > Clear & Convincing Proof
Family Law > Adoption > Procedures > General Overview
Family Law > Child Support > General Overview
[HN2] The party seeking permission to adopt has the burden to establish by clear and convincing evidence that: (1) the natural parent has not supported the child for one year before the petition for adoption was filed; and (2) the failure to provide support was without justifiable cause. Once the petitioner has established, by clear and convincing evidence, that the natural parent has failed to support the child for at least the requisite one year period, the burden of going forward with the evidence shifts to the natural parent to show some facially justifiable cause for such failure. The burden of proof, however, remains with the petitioner.

Civil Procedure > Appeals > Standards of Review > General Overview
Family Law > Adoption > Consent > General Overview
[HN3] A trial court's ruling on the issue of whether the natural parent failed to provide support with justifiable cause should not be reversed on appeal unless the ruling is against the manifest weight of the evidence.

Family Law > Child Support > Obligations > General Overview
[HN4] *Ohio Rev. Code Ann. § 2301.36(A)* provides that upon issuing or modifying a support order or issuing or modifying any order described in *Ohio Rev. Code Ann. § 3113.21(D)*, the court shall require that support payments be made to the child support enforcement agency of the county as trustee for remittance to the person entitled to receive payments. Any payment of money by the person responsible for the support payments under a support order to the person entitled to receive the support payments that is not made to the child support enforcement agency in accordance with the applicable support order shall not be considered as a payment of support and, unless the payment is made to discharge an obligation other than support, shall be deemed to be a gift.

Governments > Legislation > Interpretation
[HN5] *Ohio Rev. Code Ann. § 1.42* provides that words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or a particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Family Law > Child Custody > General Overview
Family Law > Child Support > Obligations > General Overview
Family Law > Guardians > General Overview
[HN6] Ohio courts construe the term "support" used in *Ohio Rev. Code Ann. § 3107.07(A)* to encompass situations where natural parents are subject to court imposed support orders. The common usage of the word support carries with it the connotation that payments will be made to the child's custodian or to a bureau which will forward the payments to a child's custodian for direct use for items such as food, clothing, and shelter for the child. Payments made directly to the child constitute a gift as there is no indication that the payments will ever reach the custodian of the child to be used for the child's needs.

COUNSEL: John F. McCarthy and Warren D. Wolfe, for appellants.Gregg D. Hickman, for appellee.

JUDGES: Peter M. Handwork, P.J., James R. Sherck, J., CONCUR. George M. Glasser, J., concurs in judgment only.

OPINION

DECISION AND JOURNAL ENTRY

This is an appeal from a judgment entry of the Lucas County Court of Common Pleas, Probate Division, in which the court dismissed a petition for adoption filed by appellants. The court ruled that the petition seeking permission for a husband to adopt the son of his wife could not be granted as the child's natural father did not give consent to the adoption. Appellants, the husband and wife, have presented one assignment of error for this court's consideration which states:

"A. The Probate Court Erred in Finding that Without Appellee's Consent, Appellants' Petition for Adoption Must Be Denied Because as a Matter of Law Appellee failed to Support His Son for at Least One Year Preceding the Filing of the Petition for Adoption and His Failure To Pay Support Was Without Justifiable Cause."

After carefully reviewing the record, we conclude that the ruling of the Lucas County Court of Common Pleas, Probate Division, requiring [*2] the consent of the child's natural father for an adoption was against the manifest weight of the evidence.

[HN1] The Ohio statute which governs when the consent of a natural parent is required for the adoption of the parent's child is *R.C. 3107.07* which reads in pertinent part:

"Consent to adoption is not required of any of the following:

"(A) A parent of a minor, when it is alleged in the adoption petition and the court finds after proper service of notice and hearing, that the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner." *R.C. 3107.07(A).*

When appellants filed the petition for the adoption of the minor child in this case on July 9, 1990, appellants indicated that appellee's consent for the adoption was not required even though he was the child's natural father as he had failed without justifiable cause to provide support for the child for at least one year immediately preceding the filing [*3] of the petition for an adoption. A hearing was conducted on November 21, 1990, to determine whether the consent of appellee could be waived. The Supreme Court of Ohio has indicated that [HN2] the party seeking permission to adopt has the burden to establish by clear and convincing evidence that: (1) the natural parent has not supported the child for one year before the petition for adoption was filed; and (2) the failure to provide support was without justifiable cause. *In re Adoption of Bovett (1987), 33 Ohio St. 3d 102*, paragraphs two and three of the syllabus. The court has stated:

"Once the petitioner has established, by clear and convincing evidence, that the natural parent has failed to support the child for at least the requisite one year period, the burden of going forward with the evidence shifts to the natural parent to show some facially justifiable cause for such failure. The burden of proof, however, remains with the petitioner." *Id.* at paragraph two of the syllabus.

At the same time, the Supreme Court of Ohio indicated that [HN3] a trial court's ruling on the issue of whether the natural parent failed to provide support with justifiable cause should not be reversed [*4] on appeal unless the ruling is against the manifest weight of the evidence. *Id.* at paragraph four of the syllabus.

At the hearing conducted by the lower court, evidence was introduced showing that when appellee was divorced from the child's mother, the Lucas County Court of Common Pleas imposed an obligation for support of the child on appellee. Further evidence was introduced to show that appellee had failed to make any payments on the child support through the Lucas County Child Support Enforcement Agency for at least one year preceding the filing of the petition for adoption. Appellee then assumed the burden of going forward with the evidence. Appellee agreed that he had not made any child support payments through the Lucas County Child Support Enforcement Agency. However, appellee testified that during much of the year preceding the filing of the petition for adoption he was incarcerated for various violations of the law stemming from his problems with alcohol abuse. He acknowledged that there were short periods of time during the year preceding the filing of the petition when he was not incarcerated. He also acknowledged that during those periods of time he failed to seek [*5] employment. He testified that in the year preceding the filing of the petition for adoption, he earned $ 200. He testified that he earned the money cleaning buildings for an acquaintance. He then testified that during the year immediately preceding the filing of the petition for adoption, he sent his son a total of $ 14. He stated that he included a $ 10 bill in one letter which he sent his son and four $ 1 bills in a second letter which he sent directly to his son. After making that disclosure, appellee was questioned by appellants' attorney and responded as follows:

"Q. But you didn't give any money to your former wife?

"A. Well, I figure that I've given her enough in my lifetime, I would give some to Ryan.

"Q. You say you figure you have no obligation to support your child?

"A. Those were your words, sir. No, I don't figure--

"Q. You said to me that you had given her enough in your lifetime, right?

"A. Yes, sir.

"* * *

"Q. Just to establish that was not directed to your former wife in the terms of child support?

"A. Excuse me?

"Q. That money was not sent to your former wife to meet your child support obligations, was it?

"A [*6] Well, it was sent to Ryan, and I'm assuming that they don't let him handle that kind of money, and Denise would take the money and spend it in whatever fashion would be reasonable.

"Q. You don't know that then?

"A. No. I don't know that."

The trial court, considering this testimony, ruled that appellee had provided support in the amount of $ 14 to his child during the year immediately preceding the filing of the petition for adoption. Accordingly, the court ruled that the petition for adoption could not be granted absent approval from appellee. Since appellee refused to consent to the adoption, the petition for adoption was dismissed.

Appellants urged the trial court to construe the $ 14 given to the minor child as a gift. In support of their argument, appellants pointed to the provisions of *R.C. 2301.36(A)* which state in pertinent part:

[HN4] "Upon issuing or modifying a support order or issuing or modifying any order described in division (D) of *section 3113.21 of the Revised Code*, the court shall require that support payments be made to the child support enforcement agency of the county as trustee for remittance to the person entitled to receive payments * * *. Any [*7] payment of money by the person responsible for the support payments under a support order to the person entitled to receive the support payments that is not made to the child support enforcement agency in accordance with the applicable support order shall not be considered as a payment of support and, unless the payment is made to discharge an obligation other than support, shall be deemed to be a gift." *R.C. 2301.36.*

The trial court rejected the argument of appellants stating:

"Under *R.C. 2301.34(B)*, which defines the phrase 'support order,' no section under *Chapter 3107 of the Revised Code*, which deals with adoptions, is referred to. The word 'support' and the phrase 'support order' have two different meanings, hence the support order mentioned under *R.C. 2301.34(A)* has no application to the support called for under *R.C. 3107.07(A)*."

No citations were given by the trial court to support its conclusion. *R.C. 1.42* states:

[HN5] "Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or a particular meaning, whether by legislative definition or otherwise, shall be construed [*8] accordingly." *R.C. 1.42.*

Our review of existing case law in Ohio demonstrates that [HN6] Ohio courts have construed the term "support" used in *R.C. 3107.07(A)* to encompass situations where natural parents were subject to court imposed support orders. See *In re Adoption of Bovett, supra* (natural father's failure to pay court imposed child support order constituted failure to provide support without justifiable cause). In addition, we find that the common usage of the word support carries with it the connotation that payments will be made to the child's custodian or to a bureau which will forward the payments to a child's custodian for direct use for items such as food, clothing, and shelter for the child. Payments made directly to the child constitute a gift as there is no indication that the payments will ever reach the custodian of the child to be used for the child's needs. Accordingly, we find that the trial court's ruling that the payment of $ 14 to the child constituted support was against the manifest weight of the evidence in this case. To the extent that appellants' sole assignment of error challenges the trial court's ruling that appellee did provide some support to his [*9] son in the year immediately preceding the filing of the adoption petition, the assignment of error is well-taken. However, this court declines to make any ruling as to whether the failure to provide support was without justifiable cause. Rather, we remand this case to the Lucas County Court of Common Pleas, Probate Division, for the court to conduct further proceedings to determine whether the failure to pay support was without justifiable cause. Appellant's sole assignment of error is well-taken in part and not well-taken in part.

The judgment of the Lucas County Court of Common Pleas, Probate Division, is reversed. This case is remanded for further proceedings consistent with this decision. Appellee is ordered to pay the court costs of this appeal.

A certified copy of this entry shall constitute the mandate pursuant to *Rule 27 of the Rules of Appellate Procedure.* See also Supp. R. 4, amended 1/1/80.

Peter M. Handwork, P.J.,

James R. Sherck, J.,

CONCUR.

George M. Glasser, J., concurs in judgment only.

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[Cite as *In re Kat P.*, 2009-Ohio-3852.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
THE ADOPTION OF:	:	Hon. William B. Hoffman, J.
	:	Hon. John W. Wise, J.
KAT.P. AND KAS.P.	:	
	:	Case Nos. 09CA10
	:	09CA11
	:	
	:	OPINION

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Probate Division, Case Nos. 085036 and 085037
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	July 29, 2009

APPEARANCES:

For Appellant	For Appellee
JAMES L. DYE P.O. Box 161 Pickerington, OH 43147	CHAD FOISSET 555 City Park Avenue Columbus, OH 43215

Farmer, P.J.

{¶1} On May 29, 2008, appellee, Jimmi Popcevski, filed a petition to adopt his two minor stepchildren without consent of their biological father, appellant, Sasho Dukovski. A hearing was held on October 6, 2008. By entry filed January 27, 2009, the trial court found appellant's consent was not needed because appellant failed without justifiable cause to provide for the maintenance and support of his minor children for at least one year prior to the filing of the petition, and failed without justifiable cause to communicate with his children for at least one year prior to the filing of the petition.

{¶2} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶3} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE BIOLOGICAL FATHER IN DETERMINING THAT HIS CONSENT TO THE ADOPTION OF HIS MINOR CHILDREN WAS NOT NECESSARY PURSUANT TO R.C. 3107.07(A) AS SASHO DUKOVSKI HAD COMMUNICATED WITH HIS CHILDREN WITHIN THE YEAR IMMEDIATELY PROCEEDING FILING THE PETITION FOR ADOPTION."

II

{¶4} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE BIOLOGICAL FATHER IN DETERMINING THAT HIS CONSENT TO THE ADOPTION OF HIS MINOR CHILDREN WAS NOT NECESSARY PURSUANT TO R.C. 3107.07(A) AS SASHO DUKOVSKI HAD PROVIDED MAINTENANCE AND/OR SUPPORT FOR HIS CHILDREN WITHIN THE YEAR IMMEDIATELY PROCEEDING FILING THE PETITION FOR ADOPTION."

III

{¶5} "ANY FAILURE BY SASHO DUKOVSKI TO COMMUNICATE WITH HIS CHILDREN WITHIN THE YEAR IMMEDIATELY PROCEEDING FILING THE PETITION FOR ADOPTION WAS JUSTIFIED PURSUANT TO R.C. 3107.07(A)."

IV

{¶6} "ANY FAILURE BY SASHO DUKOVSKI TO PROVIDE MAINTENANCE AND/OR SUPPORT FOR HIS CHILDREN WITHIN THE YEAR IMMEDIATELY PROCEEDING FILING THE PETITION FOR ADOPTION WAS JUSTIFIED PURSUANT TO R.C. 3107.07(A)."

I, II, III, IV

{¶7} We will address these assignments collectively as they relate to the same facts and the same determinations by the trial court.

{¶8} Appellant claims the trial court erred in finding that he provided no support for his children and had no contact with his children for at least one year prior to the filing of the adoption petition.

{¶9} The applicable standard for an adoption without consent is controlled by R.C. 3107.07 which states the following:

{¶10} "(A) A parent of a minor, when it is alleged in the adoption petition and the court, after proper service of notice and hearing, finds by clear and convincing evidence that the parent has failed without justifiable cause to provide more than de minimis contact with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately

preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner."

{¶11} "The party petitioning for adoption has the burden of proving, by clear and convincing evidence, that the parent failed to communicate with the child during the requisite one-year period and that there was no justifiable cause for the failure of communication." *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, paragraph four of the syllabus. "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶12} An appellate court will not disturb a trial court's decision on adoption unless it is against the manifest weight of the evidence. *In re Adoption of Masa* (1986), 23 Ohio St.3d 163. A judgment supported by some competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. A reviewing court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the judgment rendered by the trial court. *Myers v. Garson,* 66 Ohio St.3d 610, 1993-Ohio-9.

{¶13} In its entry filed January 27, 2009 at Findings of Fact Nos. 6 and 11, the trial court found that appellant provided no support and appellant had no contact with the children during the one year period proceeding the filing:

{¶14} "As of October 1, 2008, the total balance due and owing by Mr. Dukovski for children support was $38,299.09 for these children. Mr. Dukovski paid no child support during the one year prior to the Adoption Petitions being filed, May 20, 2007 through May 20, 2008, through the Child Support Enforcement Agency (CSEA) or otherwise. Further, Mr. Dukovski paid nothing in child support for these children through CSEA or otherwise for the five year period prior to the filing of these Petitions for Adoption. Additionally, the children and Mrs. Popcevski received no other form of support from Mr. Dukovski, or from anyone on his behalf, during the five year period preceding the filing of the Adoption Petitions.

{¶15} "The children have not seen or spoken with Mr. Dukovski or received any mail or the other communication since late 2003."

{¶16} Basically, there are few contested facts on the issue of providing support. The child support records substantiate that appellant paid no support from May 30, 2007 to May 29, 2008. T. at 11. This occurred despite the fact that appellant sought and received a reduced child support order on February 26, 2007 because of his limited income ($115.00 per month from the county for disability). T. at 10, 57, 78. Appellant admitted to paying no child support in the one year proceeding the filing of the petition because he did not have an income except for his disability which was delayed because of a lack of documentation. T. at 56-57, 72-74. Appellant had been denied social security disability and the matter was currently in the appeals process. T. at 68-69.

{¶17} Appellant claimed he had a justifiable cause for not supporting the children i.e., an automobile accident in 1997. He testified he suffered neck, head, and back injuries which prevented him from working or being a reliable worker. T. at 59-60, 63,

66-67, 70-71. He also suffered from anxiety attacks and depression and an inability to drive. T. at 61, 66-68, 70-71, 216-217.

{¶18} This testimony is in stark contrast to the testimony of several witnesses who stated appellant performs in a band and the performances are very physical. T. at 116-118, 132, 145, 149, 160-161. In addition, after the accident, appellant completed his music degree at The Ohio State University. T. at 61.

{¶19} Appellant's living expenses were small and he relied on his parents' support. T. at 72, 91. Basically the $115.00 per month was his to freely spend. T. at 22, 79. However, appellant did not even attempt to pay a partial amount of the reduced child support order until after the adoption petition had been filed. T. at 11. There was no evidence that any other support was given outside the realm of the child support order.

{¶20} Appellant refuted the testimony that he performs in bands and denied that he was a regular band member, despite the fact that band advertising showed him as a member and the band was paid for performing. T. at 118, 120-125, 150-151, 234-236.

{¶21} The trial court was presented with two opposite views of appellant. One side presented him as a malingerer and appellant presented himself as a victim. It was within the province of the trial court to determine from the unrefuted lack of child support for the children whether appellant had a justifiable cause. The determination of the credibility of witnesses lies within the discretion of the trial court, and we may not substitute our judgment on appeal. *Seasons Coal Company v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶22} On the issue of lack of support, we cannot find that the trial court's conclusion was against the manifest weight of the evidence.

{¶23} On the issue of contact, appellant argues he contacted the children via Christmas presents he mailed to them on December 21, 2007 to the home of the maternal grandmother, Nada Purdef. T. at 87-90. Appellant also argues he called Ms. Purdef's home in an attempt to contact the children. T. at 92-94. Ms. Purdef denied these claims. T. 169-170. She testified she never received a voicemail or a message from appellant. T. at 185.

{¶24} Appellant relies on the 2007 Christmas gifts to support his argument of a legitimate attempt to contact the children. Appellant argues the gifts were never returned, and he relies on Ohio's postmark rule. T. at 89.

{¶25} Neither of the children lived with Ms. Purdef, nor was she the day care provider as they were both in school. T. at 265-266. The gifts were sent to a stale address because Ms. Purdef had moved in late October, 2007. T. at 171. Ms. Purdef's new phone number was listed in the telephone book. T. at 171-172. Appellant's own mother, Lancha Dukovski, had contact with Ms. Purdef at church. T. at 179, 211.

{¶26} Ms. Dukovski and Sonya Canterbury, appellant's sister, testified as to the 2007 Christmas presents. They both stated "we sent" the Christmas gifts. T. at 214, 225-227. Ms. Canterbury acknowledged that the telephone call she witnessed being made to Ms. Purdef was actually initiated by Ms. Dukovski, not appellant. T. at 229. Appellant acknowledged the 2007 Christmas gifts were a joint effort by his family, not his alone. T. at 245. He admitted that he did not purchase them. Id.

{¶27} Appellant also argues the children's mother, Lola Popcevski, thwarted his attempts at visitation. Appellant argues Ms. Popcevski refused weekly supervised visitation at the Fairfield County Visitation Center from the beginning of a revised visitation order in 2004-2005. T. at 251-255. Appellant also argues Ms. Popcevski had an unlisted phone number, but he was aware of her address. T. at 247-248.

{¶28} Appellant cannot rely on old visitation issues to exonerate himself from his failure to contact the children. In examining the "contact" rule, this court has been faithful to the proposition that any contact, no matter how slight, is sufficient. As this court stated in *In re Adoption of Campbell,* Guernsey App. No. 07CA43, 2008-Ohio-1916, ¶22, 28-30, respectively:

{¶29} " 'The right of a natural parent to the care and custody of her children is one of the most fundamental in law. This fundamental liberty interest of natural parents in the care, custody and management of their children is not easily extinguished. *Santosky v. Kramer* (1982), 455 U.S. 745, 753-754. Adoption terminates those fundamental rights. R.C. 3107.15(A)(1). Accordingly, adoptions are generally not permissible absent the written consent of both parents. R.C. 3107.06.' *In re Adoption of Stephens,* Montgomery App. No. 18956, 2001-Ohio-7027.

{¶30} "Although the term 'communicate' is not defined in R.C. Chapter 3107, it has been defined as ' "to make known," "to inform a person of, convey the knowledge or information of * * * to send information or messages[.]" ' *In re Adoption of Jordan* (1991), 72 Ohio App.3d 638, 644.

{¶31} "Asked to determine the legislature's intended meaning of the term 'communicate' as used in R.C. § 3107.07(A), the Supreme Court in *Holcomb* held that:

{¶32} " 'Our reading of the statute indicates that the legislature intended to adopt an objective test for analyzing failure of communication * * *. The legislature purposely avoided the confusion which would necessarily arise from the subjective analysis and application of terms such as failure to communicate *meaningfully, substantially, significantly,* or *regularly.* Instead, the legislature opted for certainty. It is not our function to add to this clear legislative language. Rather, we are properly obliged to strictly construe this language to protect the interests of the non-consenting parent who may be subjected to the forfeiture or abandonment of his or her parental rights.' *Holcomb,* 18 Ohio St.3d at 366."

{¶33} In the case sub judice, there is no evidence that the children ever received any gifts or had the benefit of any contact with appellant. Appellant cannot receive the benefit of his dilatory conduct to excuse the lack of affirmative action on his part.

{¶34} Upon review, we find there was clear and convincing evidence to support the trial court's findings, and the trial court's decision was not against the manifest weight of the evidence.

{¶35} Assignments of Error I, II, III, and IV are denied.

{¶36} The judgment of the Court of Common Pleas of Fairfield County, Ohio, Probate Division is affirmed.

By Farmer, P.J.

Hoffman, J. and

Wise, J. concur.

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JUDGES

SGF/jpb 0713

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	
THE ADOPTION OF:	:	JUDGEMENT ENTRY
KAT.P. AND KAS.P.	:	CASE NOS. 09CA10 09CA11

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Fairfield County, Ohio, Probate Division is affirmed. Costs to appellant.

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JUDGES